

PATENT COOPERATION TREATY

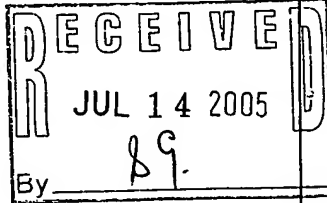
From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:
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DAK/cgm

Date of mailing (day/month/year) **07 JUL 2005**

Applicant's or agent's file reference

2110-00201 ✓

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US04/21305

International filing date (day/month/year)

01 July 2004 (01.07.2004)

Priority date (day/month/year)

03 July 2003 (03.07.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): C09B 61/00, 67/00; A61K 31/35; C07D 301/00 and US Cl.: 106/493, 498; 424/777, 426/250, 514/451, 460

Applicant

UNIBAR CORPORATION

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/21305

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/21305

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application

☒ claims Nos. 20

because:

☐ the said international application, or the said claim Nos. _____ relate to the following subject matter which does not require an international preliminary examination (*specify*):

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 20 are so unclear that no meaningful opinion could be formed (*specify*):

because it is an improper multiple dependent claim not drafted in accordance with PCT Rule 6.4(a).

☐ the claims, or said claims Nos. _____ are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for said claims Nos. _____

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐

has not been furnished

☐

does not comply with the standard

the computer readable form

☐

has not been furnished

☐

does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

☐ See Supplemental Box for further details.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/21305

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>1-9, 11-19</u>	YES
	Claims <u>10</u>	NO
Inventive step (IS)	Claims <u>1-9, 11-19</u>	YES
	Claims <u>10</u>	NO
Industrial applicability (IA)	Claims <u>1-19</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claim 10 lack novelty under PCT Article 33(2) as being anticipated by or in the alternative lacks an inventive step under PCT Article 33(3) as being obvious over WO 02/14477 A2.

The document teaches, on page 3, lines 14-20, the preparation of isolated anthocyanin pigments from *Garcinia indica*.

While the reference does not teach the same method as instantly claimed it is the position that the resulting product is the same. It should be noted that "Product-By-Process claims do not patentably distinguish the product of reference even though made by a different process". Accordingly it is the position of the examiner that the resulting product is the same absent evidence showing otherwise.

Claims 1-9 and 11-19 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the instantly claimed method of making a red pigmented composition or the claimed combination of an extract contained in a aseptic packaging.

Claims 1-19 meet the criteria set out in PCT Article 33(4), and thus possess industrial applicability because the subject matter claimed can be made or used in industry as a pigment.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/21305

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 11-19 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims are indefinite for the following reasons:

It is unclear as to what is meant by "a combination" recited in claim 11. What is the combination?

In claim 14 it is unclear as to how the extract can comprise a concentrate. Is applicant trying to say that the extract is in the form of a concentrate?

In claim 15 it is unclear as to how the extract can comprise an aqueous solution. Is applicant trying to say that the extract is in the form of an aqueous solution?

In claim 19 it is unclear as to how the extract can comprise the recited products. Is applicant trying to say that the extract is present in the recited products?